

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EDWARD LORENZO RICKETTS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-19-885-D
)	
CLIFFORD DARRINGTON, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter comes before the Court for review of the Report and Recommendation [Doc. No. 27] issued by United States Magistrate Judge Shon T. Erwin on March 18, 2020, pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Erwin recommends that Defendants Clifford Darrington and Diana Ortega’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc. No. 20] should be granted. Specifically, Judge Erwin finds that Defendants’ Motion should be decided under Fed. R. Civ. P. 56 because materials outside the Complaint are presented for consideration, and that summary judgment is appropriate under 42 U.S.C. § 1997e due to Plaintiff’s failure to exhaust administrative remedies for claims regarding jail conditions under 42 U.S.C. § 1983.¹

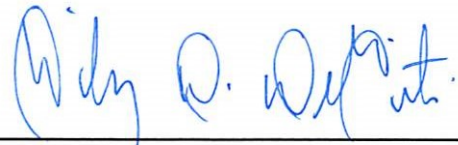
Plaintiff has failed to file a written objection within the time period set by 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(2), and Judge Erwin. *See* R&R at 11-12. Judge Erwin expressly advised Plaintiff of his right to object, the procedure and time period for filing

¹ Judge Erwin also recommends that a separate motion, Defendants’ Motion to Strike Plaintiff’s “Witness Statements” [Doc. No. 26], should be granted. If the action is dismissed for lack of administrative exhaustion, Defendants’ additional motion would be moot.

an objection, and the consequences of failing to object. *Id.* Therefore, the Court finds that Plaintiff has waived further review. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The Court further finds no error in Judge Erwin's findings and recommendation for dismissal based on a lack of administrative exhaustion. The undisputed facts show that Plaintiff has failed to satisfy the statutory requirement of 42 U.S.C. § 1997e(a) that he exhaust available administrative remedies before bringing a § 1983 action regarding his conditions of confinement.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 27] is ADOPTED. Defendants Clifford Darrington and Diana Ortega's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc. No. 20] is GRANTED, as set forth herein. A separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 13th day of April, 2020.



TIMOTHY D. DeGIUSTI
Chief United States District Judge